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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/866,115	05/25/2001	Steven Bruce Katz	PMT-003	4928
24394	7590	09/08/2004	EXAMINER	
LARIVIERE, GRUBMAN & PAYNE, LLP 19 UPPER RAGSDALE DRIVE SUITE 200 MONTEREY, CA 93940			KRAMER, JAMES A	
		ART UNIT	PAPER NUMBER	
		3627		

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/866,115	KATZ ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	James A. Kramer	3627	

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —  
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-63 and 129-156 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-63 and 129-156 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ____ .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: ____ .

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-63 and 129-156 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fox et al. in view of Admitted Prior Art.

Fox et al. teaches a computer-based Executive Information System (EIS) for determining the impact of weather and other external and internal factors on the retail industry (Abstract). Fox et al. further teaches that an effective merchandize plan (or business process) must consider all possible external and internal factors. To assimilate and analyze this data, which comes from many sources and in many formats, companies utilize management information systems (MIS). The primary function of an MIS department is to electronically collect, store, retrieve and manipulate information (column 2; lines 26-37). The present invention of Fox et al. leverages this system to provide an entirely electronic, computerized EIS implementation for ease of data retrieval/analysis with specific functions that solve specific managerial planning applications (column 7; lines 8-10).

Referring to Figure 1: Fox et al. details a conventional MIS system architecture. An MIS architecture 101 captures internal data and electronically flows this data throughout the organization for managerial planning and control purposes (column 2; lines 59-64). An EIS 129,

interfaces with the MIS data storage and retrieval facility and analysize the data and performs managerial applications without interaction with the user (column 3; lines 27-37). Examiner note that this represents invoking a software module to provide actions to resolve the impact of first information on business operations in the enterprise).

Examiner notes that Fox et al. teaches in conventional systems, external information 116 was separately made available to the user for consideration in developing managerial plan (column 3; lines 43-45). However referencing Figure 4, which represents the improved system of Fox et al. the EIS system collects the external data with the internal data and thus automating this system.

Examiner notes that Fox et al. does not teach triggering a software module to alert a user that a software module is acting to resolve the impact of first information on the business operations in the enterprise. The common knowledge or well-known in the art statement made by the Examiner in the Office Action mailed 3/10/2004 is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of Official Notice or the traverse was inadequate (MPEP2144.03(C)). Specifically, Examiner noted that it is old and well known for computer systems to notify users when taking action in order to allow users to override the action if it is improper. By way of example, Examiner points to Microsoft Windows operations that notifies/alerts a user prior to deleting or modifying a file. Examiner notes that this clearly represents the computer system notifying a user before taking actions, in order to allow the user to override that action (e.g. stop the system from deleting or modifying the file).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Fox et al. so that when the EIS system performs

managerial applications without interaction with the user, the user is notified of the application as taught by the Admitted Prior art in order to allow the user to override the application if it is improper.

***Response to Arguments***

Applicant's arguments filed 6/10/2004 have been fully considered but they are not persuasive. Applicant asserts that the form of the rejection is improper. Specifically, Applicant states that when a reference must be modified both a reference suggesting the modification and a reason for combining the references must be cited. Applicant further asserts this point by stating that an absolute requirement for "teaching, motivation, or suggestion to select and combine the references", that cannot be replaced by subjective observations in an Office Action.

Examiner disagrees with Applicant's assertion that the form Office Action is inadequate. In particular, Examiner notes Official Notice statement serves as documentary evidence of facts that are or notorious character and serves to only fill the gaps that exist in the evidentiary showing made by Fox et al. Examiner further notes that that the triggering feature, as defined by the facts asserted in the Official Notice statement are capable of instant and unquestionable demonstration as being well-known.

Applicant asserts that a key word search of Fox et al. fails to show such vital terms of the claim as "datamart," "procurement," "sourcing," and "strategic sourcing". Examiner starts by noting that the claim language includes these in the alternative, which means the reference would

only need one of these (not all) or an equivalent. Therefore a key word search of Fox et al. based on these key words is not a strong enough argument to overcome a reference.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James A. Kramer whose telephone number is (703) 305-5241. The examiner can normally be reached on Monday - Friday (8AM - 5PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (703) 305-4716. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

James A. Kramer  
Examiner  
Art Unit 3627

jak



Richard Chilcot  
Supervisory Patent Examiner  
Technology Center 2900  
*2007*

